Writ Petition no.27150 of 1995 (SS)-old number
Writ Petition no.6805 of 2001 (SS)-New number

Prabhakar Joshi----- Petitioner

Versus

G.B.Pantnagar University and another …. Respondents

Hon'ble M.M.Ghildiyal J.

The petitioner by means of this writ petition has challenged the order dated 29.11.1994 annexure 5 to the writ petition passed by the Establishment Officer, G.B.Pant University, Pant Nagar, district Udham Singh Nagar (for the short-"University") whereby the petitioner who was granted the higher pay scale vide order dated 7.2.1994 has been reverted to the lower pay scale.

Heard Sri B.D.Upadhyaya learned counsel for the petitioner and Sri Rajendra Dobhal learned counsel for the respondents.

The facts of the case are that the petitioner was appointed vide order dated 19.3.1993 as lab assistant on compassionate ground in the pay, scale of Rs.950-1500 in the College of Agriculture, of the University. By order dated 9.10.1993 higher pay scale of Rs.1200-2040 was granted to the petitioner by the University. However, by order dated 29.11.1994 he was reverted to the lower pay scale of Rs.950-1500. This order reverting the petitioner to the lower pay scale has been challenged.

Learned counsel for the petitioner has submitted that there are two pay scales sanctioned for the post of lab assistant in the University.

1. 950-1500
2. 1200-2040

The University has framed rules known as The Subordinate Staff Service Rules 1986 of the University. Rule 9 of the aforesaid rules provides source of recruitment. Rule 9 of the aforesaid rules further provides source of recruitment for the post of senior lab assistants in the College of Agriculture is as under: .

> " 75 % by promotion on the basis of seniority subject to the rejection of unfit out of the Laboratory Assistant working in the College of Agriculture. 25% by direct recruitment."

Similarly for the posts of senior lab assistants in the College of Veterinary Science it is provided:-

> " 75 % by promotion on the basis of seniority subject to the rejection of unfit out of the Laboratory Assistant working in the College of Veterinary Science. 25% by direct recruitment."

Similarly provision has been made under the rules for promotion to the posts of senior lab assistants in the College of Basis science and Humanities, Instrumentation Centre and Gas plants but the promotion will be made from the lab assistants working in the lower pay scale of the same department. On 9.10.1993 the University issued a letter to all the Deans/Directors/Head of the Departments to supply information regarding vacancies of posts to be filled in the department. This letter was issued on the basis of resolution passed by the University to the effect that in case the posts of same designation in higher pay scale are vacant in any department the same shall be filled by the senior most candidates working on that posts of the department. In reply to this letter the College of Agriculture of the University supplied information to the Establishment Officer of the University that four posts of lab assistants in the pay scale of 1200-2040 in the College of Agriculture are vacant. The information sent by the Head of the Department is filed as annexure 2 to this writ petition.

In pursuance to the resolution of the University and the reply of the Head of the Department of different departments the petitioner who was working as lab assistant in the department of agriculture was granted higher pay scale of Rs.1200-2040 by the University vide order dated 07.02.1994 which is annexure 3 to the writ petition. The name of the petitioner finds place at serial no.1 in the aforesaid order. The order dated 7.2.1994 was passed by the Establishment Officer. By order dated 29.11.1994 which is annexure 5 to the writ petition issued by the same officer three persons, namely, Sarva Sri J.S.Bora, M.K.Saxena and S.S.Panwar were granted higher pay scale of Rs.1200-2040 in the College of Agriculture and the petitioner has been reverted to the pay scale in Rs.950-1500.

The learned counsel for the petitioner has submitted that Sarva Sri J.S.Bora, M.K.Saxena and S.S.Panwar are not the employees of the College of Agriculture. On the Contrary they are the employees of the departments of Veterinary Science and Extension Directorate.

The learned counsel for the petitioner has further submitted that prior to passing of the impugned order no opportunity was given to the petitioner and as such the order cannot be sustained in the eye of law as the same has been passed in violation of principles of natural justice. The learned counsel for the respondents could not show that the petitioner was afforded opportunity prior to passing the impugned order and therefore, I find force in the submission of the learned counsel for the petitioner that the impugned order is illegal in view of the fact that the same has been passed without affording opportunity to the petitioner. The learned counsel for the respondents has submitted that prior to 1979 the University was paying salary to its employees from its own source and the pay scales for some of the posts were higher than the pay scales of government employees. After the University receiving the salary of the employees from the government the same pay scales were implemented by the University which were granted by the government in other departments. Thus, for the posts of lab assistants two pay scales i.e. 950-1500 and 1200-2040 are in existing after 1.1.1986. The higher pay scales were allowed to those persons who were already on the pay roll of the University prior to 1986 and the petitioner who was appointed in the year 1993 was granted the pay scale of 950-1500.

Since there was a demand of the employees working in the lower pay scale that since they are also performing similar duties which the employees of higher pay scales are performing they may be allowed the higher pay scale and consequently a decision was taken by the University that if the posts are vacant in the higher pay scale the persons working in the lower pay scale in the same department may be adjusted against the posts of higher pay scale. The petitioner was also adjusted in the higher pay scale. Later on, a representation was received from Sarva Sri J.S.Bora, M.K.Saxena and S.S.Panwar that they are senior to the petitioner as they had been appointed in the year 1985 and 1987 respectively as lab assistants whereas the petitioner was appointed as lab assistant in the year 1993 the University realized its mistake and the above three persons were given higher pay scale and the petitioner was reverted to the lower pay scale. I do not find force in the submission of the learned counsel for the respondents. 75 per cent posts of senior lab assistants shall be filled by way of promotion from amongst lab assistants working in the same department. Since Sarva Sri J.S.Bora,

M.K.Saxena and S.S.Panwar were not working in the college of agriculture the submission of the learned counsel for the respondents has no force. Sri Rajendra Dobhal learned counsel for the respondents has further submitted that the departments of fisheries and horticulture departments were bifurcated from the agriculture department some times in 1985 prior to the framing of these rules and Sarva Sri J.S.Bora, M.K.Saxena and S.S.Panwar were transferred to these departments though they were initially appointed in the college of agriculture as lab assistants. I do not find force in this argument. These persons joined their new department against clear vacancies and they had no lien in the agriculture department after 1985. The learned counsel for the respondents could not show any document showing that even after bifurcation of the college of agriculture Sarva Sri J.S.Bora, M.K.Saxena and S.S.Panwar were holding the lien on the posts of lab assistants in the agriculture college. The learned counsel for the respondents has further submitted that the petitioner who was appointed on 19.3.1993 as lab assistant in the pay scale of 950-1500 was promoted after 10 months in the pay scale of 1200-2040 by mistake and the University by issuing further order dated 29.11.1994 has rectified the mistake. He has further submitted that no one can be promoted within a year.

The learned counsel for the petitioner on the contrary has submitted that one Sri C.B.Pandey in the veterinary department was also promoted after 7 months of his appointment. In any case it is not disputed that the University has passed an order granting higher pay scale to the petitioner. The petitioner has not obtained the order either by misrepresentation of fact or playing any fraud. Mistake, if any, was committed by the University for which the petitioner cannot be penalized and that too without giving him opportunity of hearing. The learned counsel for the petitioner has placed reliance on the judgment in the case of **Divisional Superintendent, Eastern Railway and others, Vs. L.N.Kashri and others, reported in AIR 1974 Supreme Court 1889** wherein Hon'ble Supreme Court has held in paragraphs no.5, 6 and 7 has held as under:-

> "5. The appellants contend that because of some mistake the respondents had been put in the grade of Rs.110-180 and this mistake was rectified.

6. The respondents were confirmed in the scale of Rs.110-180. The appellants having fixed the scale and reduce the scale without giving any opportunity to the respondents to be heard. Further more the respondents on confirmation became entitled to rights to the post and to the scale of pay fixed by the Board.

7. The High Court rightly set aside the order. The appeals therefore fail and are dismissed. The appellants will pay costs to the respondents. “

The learned counsel for the petitioner has further placed reliance on the judgment in the case of **Harish Chandra Srivastava Versus State of Uttar Pradesh and others, reported in (1996) 3 UPLBEC 1840** of the Allahabad High Court wherein the court has held in paragraph no.12 as under:-

“ No doubt even if the plea as set up by the respondents that the petitioner had wrongly been awarded the pay scale to which e was not entitled and when this mistake was noticed the impugned order was passed is accepted but it is nowhere stated by the respondents at any point of time that while seeking higher pay scale on promotion on ad hoc basis the petitioner had ever misled the authorities. On the other hand the record does not indicate that it is the Department who offered and allowed the petitioner to continue on the higher pay scale and the petitioner discharged his duties on the promoted/ad hoc post in the pay scale of Rs.515-880.”

In view of the aforesaid decisions and the fact that the petitioner was granted higher pay scale by the competent authority and there was no role of the petitioner in getting the higher pay scale either by way of misrepresentation or by way of playing fraud the petitioner should not have been reverted to the lower pay scale without affording opportunity of hearing.

For the reasons stated above the writ petition is allowed. The order dated 29.11.1994 is quashed. However, it is open to the University to pass appropriate order after giving opportunity to the petitioner. No order as to costs.

(M.M.Ghildiyal J.)

July 17,2003
MPS